

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

OBEL CRUZ-GARCIA,	§	
<i>Petitioner,</i>	§	
	§	
v.	§	CIVIL NO. 4:17-cv-03621
	§	(Death Penalty Case)
BOBBY LUMPKIN, Director,	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
<i>Respondent.</i>	§	

**RESPONDENT'S MOTION TO RECONSIDER ORDER GRANTING, IN
PART, MOTION TO AMEND SCHEDULING ORDER**

This is a federal habeas corpus proceeding initiated by Petitioner Obel Cruz-Garcia, a death-sentenced Texas inmate, pursuant to 28 U.S.C. § 2254. Respondent recently filed an unopposed motion to amend this Court's scheduling order, seeking to extend the deadlines for his responses to Petitioner's motions and for his answer. ECF No. 80. This Court granted the motion, in part, ordering that the responses and answer be filed on or before October 17, 2022. ECF No. 81. Respondent respectfully requests that the Court reconsider its order by amending the scheduling order such that Respondent's responses to Petitioner's motions be due October 17, 2022, and Respondent's answer to the second amended petition be due November 15, 2022.

On May 4, 2022, Petitioner filed his second amended petition, ECF No. 73, raising several new claims and reorganizing the claims he raised in his first

amended petition, ECF No. 38.¹ Pursuant to this Court’s scheduling order, ECF No. 65, Respondent’s answer was initially due September 1, 2022. Petitioner later filed motions for an evidentiary hearing and discovery, responses to which were initially due August 2, 2022. ECF Nos. 74, 75. Respondent then sought to carry his responses to the motions to coincide with the filing of his answer to the petition, i.e., September 1, 2022. ECF No. 76 at 2 (citing Order 4–5, *Balderas v. Lumpkin*, No. 4:20-CV-4262 (S.D. Tex. June 1, 2021, ECF No. 25 (“This Court will not possess sufficient information to decide whether additional factual review is permitted or necessary until Balderas files his amended petition and Respondent answers.”))). This Court granted the motion. ECF No. 77. Respondent then sought and was granted a thirty-two-day extension of his deadlines to October 3, 2022. ECF Nos. 78, 79. Lastly, Respondent’s counsel requested a forty-three-day extension of his deadlines to November 15, 2022. ECF No. 80. In support of the request, counsel cited, *inter alia*, extraordinarily long briefing— both a merits brief and a separate request for additional certificate of appealability, consisting of approximately 33,000 words—that was required in *Tabler v. Lumpkin*, No. 22-70001 (5th Cir.), as

¹ This Court reopened these proceedings on November 9, 2021, following a stay that was requested by Petitioner. ECF No. 65. Petitioner initially had until February 18, 2022, to file the second amended petition. *Id.* Petitioner was granted extensions of time until May 4, 2022, to file the petition. ECF Nos. 69, 72.

well as her previously scheduled leave out of the country from October 10 to October 17, 2022. ECF No. 80 at 2. Counsel recently filed the responsive briefs in the Fifth Circuit on September 29, 2022, encompassing more than 27,000 words, as well as a responsive brief upon the request of the Fifth Circuit in *Cole v. Lumpkin*, No. 21-70011. This Court did not note in its orders granting Respondent's previous motions that any further extensions would be denied or shortened. ECF Nos. 77, 79.

This Court denied Respondent's recent extension request because it was his third request to extend deadlines. ECF No. 81. But the recent extension request was only Respondent's second request to extend the deadline for his answer, and only his second request to extend the deadline to respond to Petitioner's motions following the initial request to carry the deadline for the responses with his answer deadline in the interest of efficiency. *See* ECF No. 76 at 2–3. Additionally, as counsel noted, she will be out of the country from October 10 until October 17, 2022, the day this Court has ordered all of Respondent's briefing to be filed. ECF Nos. 80, 81. For these reasons, Respondent requests that the Court reconsider its order.

Respondent respectfully requests that the Court order his deadlines to Petitioner's motions for an evidentiary hearing and discovery to be October 17, 2022, and his deadline to file an answer to the second amended petition to be

November 15, 2022. Therefore, the Respondent respectfully requests that the Court enter an amended scheduling order to reflect the following:

1. On or before **October 17, 2022**, Respondent shall file his responsive pleading to Petitioner's motions for an evidentiary hearing and discovery.
2. On or before **November 15, 2022**, Respondent shall file his answer to the second amended petition.
2. Within **sixty (60) days** of the date Respondent files his answer, Petitioner shall file his reply to Respondent's answer and his reply in support of his motions for an evidentiary hearing and discovery.
3. By this agreement, Respondent does not waive or forfeit any arguments related to the amended petition, including all defenses under Rule 5 or those found under Title 28, nor is it a concession that any motion for stay, discovery or an evidentiary hearing is timely.

This request is not designed to harass Petitioner, nor to unnecessarily delay these proceedings, but to ensure that Petitioner pleadings are properly addressed. Accordingly, Respondent requests that the scheduling order be amended as discussed above.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court reconsider its order and amend the deadlines as outlined above.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF CONFERENCE

Counsel for Petitioner has indicated that he takes no position on this motion.

s/ Cara Hanna
CARA HANNA
Assistant Attorney General

CERTIFICATE OF SERVICE

I do hereby certify that on October 6, 2022, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court,

Southern District of Texas, using the electronic case-filing system of the Court. The electronic case-filing system sent a “Notice of Electronic Filing” (NEF) to the following counsel of record, who consented in writing to accept the NEF as service of this document by electronic means:

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